

requirements such as power and environmental requirements for such listed and described equipment and/or facilities. Upon the execution by both parties of a final list and description, including any applicable charges, this Agreement shall be deemed to have been amended to include the terms and conditions of the final list and description.

7.2.2 Limitations. The foregoing imposes no obligation upon SWBT to purchase additional plant or equipment, relinquish used or forecasted space or facilities, or to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy a subsequent request for additional space or the placement of additional equipment or facilities.

7.3 Administrative Uses. The Interconnector may use the Premises for placement of equipment and facilities only. The Interconnector's employees, agents and contractors shall be permitted access to the Premises at all reasonable times, provided that the Interconnector's employees, agents and contractors comply with SWBT's policies and practices pertaining to fire, safety and security. The Interconnector agrees to comply promptly with all laws, ordinances and regulations affecting the use of the Premises. Upon the expiration of the Agreement, the Interconnector shall surrender the Premises to SWBT, in the same condition as when first occupied by the Interconnector, ordinary wear and tear excepted.

7.4 Threat to Network or Facilities. Interconnector equipment or operating practices representing a significant demonstrable technical threat to SWBT's network or facilities, including the Building, are strictly prohibited.

7.5 Interference or Impairment. Notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in the Premises shall not interfere with or impair service over any facilities of SWBT or the facilities of any other person or entity located in the Building; create hazards for or cause damage to those facilities, the Premises, or the Building; impair the privacy of any communications carried in, from, or through the Building; or create hazards or cause physical harm to any individual or the public. Any of the foregoing events would be a material breach

of this Agreement.

**7.6 Interconnection to Others.** To the extent required by law, SWBT will permit the collocator to connect with another collocator within the same eligible structure for interconnection with SWBT or to access SWBT's unbundled network elements. SWBT will provide nothing more than the labor and physical structure (s) necessary for the collocator (s) to pull facilities provided by one collocator from its cage to the cage of another collocator. However, if as an example, the collocators requesting the connection are not located on the same floor and cannot physically pull the cable themselves, SWBT will perform the cable pull on a time and materials basis. At no time will the Collocator be allowed access to any portion of the eligible structure other than the physical collocation area. SWBT (1) will not make any physical connection within the Collocator's cage; (2) will not accept any liability for the cable or the connections, or the traffic carried thereon; and (3) will not maintain any records concerning these connections. The cost to provide these connections will be determined on an ICB basis.

**7.7 Personalty and its Removal.** Subject to this Article, the Interconnector may place or install in or on the Premises such fixtures and equipment as it shall deem desirable for the conduct of business. Personal property, fixtures and equipment placed by the Interconnector in the Premises shall not become a part of the Premises, even if nailed, screwed or otherwise fastened to the Premises, but shall retain their status as personalty and may be removed by Interconnector at any time. Any damage caused to the Premises by the removal of such property shall be promptly repaired by Interconnector at its expense.

**7.8 Alterations.** In no case shall the Interconnector or any person purporting to be acting through or on behalf of the Interconnector make any rearrangement, modification, improvement, addition, repair, or other alteration to the Premises or the Building without the advance written permission and direction of SWBT. SWBT shall consider a modification, improvement, addition, repair, or other alteration requested by the Interconnector, provided that SWBT shall have the right to reject or modify any such request. The cost of any such construction shall be paid by Interconnector in accordance with

SWBT's then-standard custom work order process.

## ARTICLE VIII - STANDARDS

8.1 Minimum Standards. This Agreement and the physical collocation provided hereunder is made available subject to and in accordance with

- (a) The Bellcore Network Equipment Building System (NEBS) Generic Requirements (GR-63-CORE and GR-1089-CORE), as may be amended at any time and from time to time, and any successor documents;
- (b) SWBT's Technical Publication for Physical Collocation dated February, 1997, as may be amended from time to time;
- (c) SWBT's Technical Publication 76300, Installation Guide, followed in installing network equipment and facilities within SWBT central offices, as may be amended from time to time;
- (d) SWBT's Emergency Operating Procedures, as may be amended from time to time; and
- (e) any statutory and/or regulatory requirements in effect at the execution of this Agreement or that subsequently become effective and then when effective.

The Interconnector shall strictly observe and abide by each.

8.2 Revisions. Any revision to SWBT's Technical Publication for Physical Collocation, its Technical Publication 76300, or its Emergency Operating Procedures shall become effective and thereafter applicable under this Agreement thirty (30) days after such revision is released by SWBT; provided, however, that any revision made to address situations potentially harmful to SWBT's network or the Premises, or to comply with statutory and/or regulatory requirements shall become effective immediately.

8.3 Compliance Certification. The Interconnector warrants and represents compliance with the Bellcore Network Equipment Building System (NEBS) Generic Requirements (GR-63-CORE and GR-1089-CORE) for each item set forth in Attachment 1. The Interconnector also warrants and represents

that any equipment or facilities that may be placed in the Premises pursuant to Section 7.2.1 or otherwise shall be so compliant. **DISCLOSURE OF ANY NON-COMPLIANT ITEM IN ATTACHMENT 1, PURSUANT TO SECTION 7.2.1, OR OTHERWISE SHALL NOT QUALIFY THIS ABSOLUTE CERTIFICATION IN ANY MANNER.**

#### **ARTICLE IX - RESPONSIBILITIES OF THE INTERCONNECTOR**

9.1 **Contact Number**. The Interconnector is responsible for providing to SWBT personnel a contact number for Interconnector technical personnel who are readily accessible 24 hours a day, 7 days a week.

9.2 **Trouble Status Reports**. The Interconnector is responsible for providing trouble report status when requested by SWBT.

9.3 **Optical Fiber Extension**. The Interconnector is responsible for bringing its fiber optic cable to the wire center entrance manhole(s) designated by SWBT, and for leaving sufficient cable length in order for SWBT to fully extend the Interconnector-provided cable through the cable vault to the Premises.

9.4 **Regeneration**. Regeneration of either DS1 or DS3 signal levels may be provided by the Interconnector, or SWBT under its then-standard custom work order process, including payment requirements prior to the installation of the regeneration equipment.

9.5 **Removal**. The Interconnector is responsible for removing any equipment, property or other items that it brings into the Premises or any other part of the Building. If the Interconnector fails to remove any equipment, property, or other items from the Premises within thirty (30) days after discontinuance of use, SWBT may perform the removal and shall charge the Interconnector for any materials used in any such removal, and the time spent on such removal at the then-applicable hourly rate for custom work. Further, in addition to the other provisions herein, the Interconnector shall

indemnify and hold SWBT harmless from any and all claims, expenses, fees, or other costs associated with any such removal by SWBT.

**9.6 Interconnector's Equipment and Facilities.** The Interconnector is solely responsible for the design, engineering, testing, performance, and maintenance of the equipment and facilities used by the Interconnector in the Premises. The Interconnector will be responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the Premises:

- (a) its fiber optic cable(s);
- (b) its equipment;
- (c) required point of termination cross connects;
- (d) point of termination maintenance, including replacement of fuses and circuit breaker restoration, if and as required; and
- (e) the connection cable and associated equipment which may be required within the Premises to the point(s) of termination.

**SWBT NEITHER ACCEPTS NOR ASSUMES ANY RESPONSIBILITY WHATSOEVER IN ANY OF THESE AREAS.**

**9.7 Verbal Notifications Required.** The Interconnector is responsible for immediate verbal notification to SWBT of significant outages or operations problems which could impact or degrade SWBT's network, switches, or services, and for providing an estimated clearing time for restoral. In addition, written notification must be provided within twenty-four (24) hours.

**9.8 Service Coordination.** The Interconnector is responsible for coordinating with SWBT to ensure that services are installed in accordance with the service request.

**9.9 Testing.** The Interconnector is responsible for testing, to identify and clear a trouble when the trouble has been isolated to an Interconnector-provided facility or piece of equipment. If SWBT testing is also required, it will be provided at charges specified in SWBT's F.C.C. No. 73, Section 13.

## **ARTICLE X - QUIET ENJOYMENT**

Subject to the other provisions hereof, SWBT covenants that it has full right and authority to permit the use of the Premises by the Interconnector and that, so long as the Interconnector performs all of its obligations herein, the Interconnector may peaceably and quietly enjoy the Premises during the term hereof.

## **ARTICLE XI - ASSIGNMENT**

The Interconnector shall not assign or otherwise transfer this Agreement, neither in whole nor in part, or permit the use of any part of the Premises by any other person or entity, without the prior written consent of SWBT. Any purported assignment or transfer made without such consent shall be voidable at the option of SWBT. The Interconnector shall not permit any third party to jointly occupy the Premises.

## **ARTICLE XII - CASUALTY LOSS**

**12.1 Damage to Premises.** If the Premises are damaged by fire or other casualty, and

- (a) The Premises are not rendered untenable in whole or in part, SWBT shall repair the same at its expense (as hereafter limited) and the rent shall not be abated, or
- (b) The Premises are rendered untenable in whole or in part and such damage or destruction can be repaired within ninety (90) days, SWBT has the option to repair the Premises at its expense (as hereafter limited) and rent shall be proportionately abated while Interconnector was deprived of the use. If the Premises cannot be repaired within ninety (90) days, or SWBT opts not to rebuild, then this Agreement shall (upon notice to the Interconnector within thirty (30) days following such occurrence) terminate as of the date of such damage.

Any obligation on the part of SWBT to repair the Premises shall be limited to repairing, restoring and rebuilding the Premises as originally prepared for the Interconnector and shall not include any obligation

to repair, restore, rebuild or replace any alterations or improvements made by the Interconnector or by SWBT on request of the Interconnector; or any fixture or other equipment installed in the Premises by the Interconnector or by SWBT on request of the Interconnector.

12.2. Damage to Building. In the event that the Building shall be so damaged by fire or other casualty that closing, demolition or substantial alteration or reconstruction thereof shall, in SWBT's opinion, be advisable, then, notwithstanding that the Premises may be unaffected thereby, SWBT, at its option, may terminate this Agreement by giving the Interconnector ten (10) days prior written notice within thirty (30) days following the date of such occurrence, if at all possible.

#### **ARTICLE XIII - RE-ENTRY**

If the Interconnector shall default in performance of any agreement herein, and the default shall continue for thirty (30) days after receipt of written notice, or if the Interconnector is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess the Premises, expel the Interconnector and any claiming under the Interconnector, remove the Interconnector's property, forcibly if necessary, and thereupon this Agreement shall terminate, without prejudice to any other remedies SWBT might have. SWBT may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service by the Interconnector at any time thereafter.

#### **ARTICLE XIV - LIMITATION OF LIABILITY**

14.1 Limitation. With respect to any claim or suit for damages arising in connection with the mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service hereunder, the liability of SWBT, if any, shall not exceed an amount equivalent to the proportionate monthly charge to the Interconnector for the period during which such mistake, omission, interruption, delay, error, or defect in transmission or service occurs and continues. However, any such

mistakes, omissions, interruptions, delays, errors, or defects in transmission or service which are caused or contributed to by the negligence or willful act of the Interconnector or which arise in connection with the use of the Interconnector-provided facilities or equipment shall not result in the imposition of any liability whatsoever upon SWBT.

Neither party shall be responsible to the other for any indirect, special, consequential, lost profit, or punitive damages, whether in contract or tort.

Each party shall be indemnified and held harmless by the other against claims and damages by any third party arising from provision of the other party's services or equipment except those claims and damages directly associated with the provision of services to the other party which are governed by the provisioning party's applicable tariffs.

Neither party shall have any liability whatsoever to the customers of the other party for claims arising from the provision of the other party's service to its customers, including claims for interruption of service, quality of service or billing disputes.

The liability of either party for its willful misconduct, if any, is not limited by this Agreement. With respect to any other claim or suit, by a customer or by any others, for damages associated with the installation, provision, preemption, termination, maintenance, repair or restoration of service, SWBT's liability, if any, shall not exceed an amount equal to the proportionate monthly charge for the affected period.

SWBT shall not be liable for any act or omission of any other carrier or customer providing a portion of a service, nor shall SWBT for its own act or omission hold liable any other carrier or customer providing a portion of a service.

When the Interconnector is provided service under this Agreement, SWBT shall be indemnified, defended and held harmless by the Interconnector against any claim, loss or damage arising from the customer's use of services offered under this Agreement, involving:

- (a) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from the



customer's own communications;

- (b) Claims for patent infringement arising from the customer's acts combining or using the service furnished by SWBT in connection with facilities or equipment furnished by the customer; or
- (c) All other claims arising in connection with any act or omission of the Interconnector in the course of using services provided pursuant to this Agreement.

14.2 Third Parties. The Interconnector acknowledges and understands that SWBT may provide space in or access to the Building to other persons or entities ("Others"), which may include competitors of Interconnectors; that such space may be close to the Premises, possibly including space adjacent to the Premises and/or with access to the outside of the Premises; and that the cage around the Premises is a permeable boundary that will not prevent the Others from observing or even damaging the Interconnector's equipment and facilities. In addition to any other applicable limitation, SWBT shall have absolutely no liability with respect to any action or omission by any Other, regardless of the degree of culpability of any such Other or SWBT, and regardless of whether any claimed SWBT liability arises in tort or in contract. The Interconnector shall save and hold SWBT harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other acting for, through, or as a result of the Interconnector.

#### **ARTICLE XV - INDEMNIFICATION OF SWBT**

In addition to any other provision hereof, the Interconnector agrees to indemnify, defend and save harmless SWBT (including its officers, directors, employees, and other agents) from any and all claims, liabilities, losses, damages, fines, penalties, costs, attorney's fees or other expenses of any kind, arising in connection with Interconnector's use of the Premises, conduct of its business or any activity, in or about the Premises, performance of any terms of this Agreement, or any act or omission of the Interconnector (including its officers, directors, employees, agents, contractors, servants, invitees, or licensees). Defense of any claim shall be reasonably satisfactory to SWBT.

## **ARTICLE XVI - SERVICES, UTILITIES, MAINTENANCE AND FACILITIES**

16.1 Operating Services. SWBT, at its sole cost and expense, shall maintain for the Building customary building services, utilities (excluding telephone facilities), including janitor and elevator services, 24 hours a day. The Interconnector shall be permitted to have a single-line business telephone service for the Premises subject to applicable SWBT tariffs.

16.2 Utilities. SWBT will provide negative DC and AC power, back-up power, heat, air conditioning and other environmental support necessary for the Interconnector's equipment, in the same manner that it provides such support items for its own equipment within that wire center.

16.3 Maintenance. SWBT shall maintain the exterior of the Building and grounds, and all entrances, stairways, passageways, and exits used by the Interconnector to access the Premises.

16.4 Legal Requirements. SWBT agrees to make, at its expense, all changes and additions to the Premises required by laws, ordinances, orders or regulations of any municipality, county, state or other public authority including the furnishing of required sanitary facilities and fire protection facilities, except fire protection facilities specially required because of the installation of telephone or electronic equipment and fixtures in the Premises.

## **ARTICLE XVII - LIMITATION OF ACTIONS; DISPUTE RESOLUTION**

17.1 Finality of Disputes. No claim arising from this Agreement shall be brought more than twenty-four (24) months from the date of occurrence which gives rise to the claim.

17.2 Alternative to Litigation. The parties desire to resolve disputes arising in connection with this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising from or relating to this Agreement.

**17.3 Resolution of Disputes Between Parties.** At the written request of a party, each party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may use other alternative dispute resolution procedures, such as mediation, to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement, exempt from discovery and production, shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

**17.4 Arbitration.** If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set forth in those rules. Discovery shall be controlled by the arbitrator and shall be permitted only to the extent set forth in this Section. Each party may submit in writing to the other party, and the receiving party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following:

- (a) Interrogatories
- (b) Demands to produce documents
- (c) Requests for admission

Additional discovery may be permitted upon mutual agreement of the parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in the state of (Collocation). The arbitrator shall control the scheduling so as to process the matter expeditiously. The parties shall submit written briefs five days before the hearing. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The

arbitrator has no authority to order punitive or consequential damages. The times specified in this section may be extended upon mutual agreement of the parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

17.5 Costs. Each party shall bear its own costs of these procedures. A party seeking discovery shall reimburse the responding party the costs of production of documents (including search time and reproduction costs). The parties shall equally split the fees of the arbitration and the arbitrator.

#### **ARTICLE XVIII - SUCCESSORS BOUND**

Without limiting Article XI hereof, the conditions and agreements contained herein shall bind and inure to the benefit of SWBT, the Interconnector and their respective successors and, except as otherwise provided herein, assigns.

#### **ARTICLE XIX - CONFLICT OF INTEREST**

The Interconnector represents that no employee or agent of SWBT has been or will be employed, retained, paid a fee, or otherwise has received or will receive any personal compensation or consideration from the Interconnector, or any of the Interconnector's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.

#### **ARTICLE XX - NON-EXCLUSIVE REMEDIES**

No remedy herein conferred upon is intended to be exclusive of any other remedy in equity, provided by law, or otherwise, but each shall be in addition to every other such remedy.

## ARTICLE XXI - NOTICES

21.1 Except as may be specifically permitted in this Agreement, any notice, demand, or payment required or desired to be given by one party to the other shall be in writing and shall be valid and sufficient if dispatched by registered or certified mail, return receipt requested, postage prepaid, in the United States mails, or by facsimile transmission; provided, however, that notices sent by such registered or certified mail shall be effective on the third business day after mailing and those sent by facsimile transmission shall only be effective on the date transmitted if such notice is also sent by such registered or certified mail no later than the next business day after transmission, all addressed as follows:

**If to SWBT:** **Account Manager - CPAT**  
**One Bell Plaza, Rm. 522**  
**Dallas, TX 75202**

**If to the Interconnector:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party hereto may change its address by written notice given to the other party hereto in the manner set forth above.

## ARTICLE XXII - COMPLIANCE WITH LAWS

The Interconnector and all persons acting through or on behalf of the Interconnector shall comply with the provisions of the Fair Labor Standards Act, the Occupational Safety and Health Act, and all other applicable federal, state, county, and local laws, ordinances, regulations and codes (including identification and procurement of required permits, certificates, approvals and inspections) in its performance hereunder. The Interconnector further agrees during the term of this Agreement to comply with all applicable Executive and Federal regulations as set forth in SW9368, attached as Attachment 3

and incorporated herein, as may be modified from time to time.

### **ARTICLE XXIII - OSHA STATEMENT**

The Interconnector, in recognition of SWBT's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SWBT with all federal, state and local laws, safety and health regulations relating to the Premises which the Interconnector has assumed the duty to maintain pursuant to this Agreement, and to indemnify and hold SWBT harmless for any judgments, citations, fines, or other penalties which are assessed against SWBT as the result of the Interconnector's failure to comply with any of the foregoing. SWBT, in its status as an employer, shall comply with all federal, state and local laws, safety and health standards and regulations with respect to the structural and those other portions of the Premises which SWBT has agreed to maintain pursuant hereto.

### **ARTICLE XXIV - INSURANCE**

**24.1 Coverage Requirements.** The Interconnector shall, at its sole cost and expense procure, maintain, pay for and keep in force the following insurance coverage and any additional insurance and/or bonds required by law and underwritten by insurance companies having a BEST Insurance rating of A+VII or better, and which is authorized to do business in the jurisdiction in which the Premises are located. SWBT shall be named as an ADDITIONAL INSURED on general liability policy.

- (a) Comprehensive General Liability insurance including Products/Completed Operations Liability insurance including the Broad Form Comprehensive General Liability endorsement (or its equivalent(s)) with a Combined Single limit for Bodily Injury and Property Damage of \$1,000,000. Said coverage shall include the contractual, independent contractors products/completed operations, broad form property, personal injury and fire legal liability.
- (b) If use of an automobile is required or if the Interconnector is provided or otherwise allowed parking space by SWBT in connection with this Agreement, automobile liability insurance with

minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combine. Coverage shall extend to all owned, hired and non-owned automobiles. The Interconnector hereby waives any rights of recovery against SWBT for damage to the Interconnector's vehicles while on the grounds of the Building and the Interconnector will hold SWBT harmless and indemnify it with respect to any such damage or damage to vehicles of the Interconnector's employees, contractors, invitees, licensees or agents.

- (c) Workers' Compensation insurance with benefits afforded in accordance with the laws of the state in which the space is to be provided.
- (d) Employer's Liability insurance with minimum limits of \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease per employee and \$500,000 for bodily injury by disease policy aggregate.
- (e) Umbrella/Excess liability coverage in an amount of \$5 million excess of coverage specified above.
- (f) All Risk Property coverage on a full replacement cost basis insuring all of the Interconnector's personal property situated on or within the Building or the Premises. The Interconnector releases SWBT from and waives any and all right of recovery, claim, action or cause of action against SWBT, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to Interconnector or located on or in the space at the instance of the Interconnector by reason of fire or water or the elements or any other risks would customarily be included in a standard all risk casualty insurance policy covering such property, regardless of cause or origin, including negligence of SWBT, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on the Interconnector's fixtures and other personal property shall contain a waiver of subrogation against SWBT, and any rights of the Interconnector against SWBT for damage to the Interconnector's fixtures or

personal property are hereby waived.

The Interconnector may also elect to purchase business interruption and contingent business interruption insurance, knowing that SWBT has no liability for loss of profit or revenues should an interruption of service occur.

**24.2 Coverage Increases.** The limits set forth in Section 24.1 may be increased by SWBT from time to time during the term of occupancy to at least such minimum limits as shall then be customary in respect of comparable situations within the existing SWBT buildings.

**24.3 Primary Coverage.** All policies purchased by the Interconnector shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by SWBT.

**24.4 Effective Date.** All insurance must be in effect on or before occupancy date and shall remain in force as long as any of the Interconnector's facilities or equipment remain within the Premises or the Building. If the Interconnector fails to maintain the coverage, SWBT may pay the premiums thereon and, if so, shall be reimbursed by the Interconnector.

**24.5 Supporting Documentation.** The Interconnector shall submit certificates of insurance and copies of policies reflecting the coverages specified above prior to the commencement of the work called for in this Agreement. The Interconnector shall arrange for SWBT to receive thirty (30) days advance written notice from the Interconnector's insurance company(ies) of cancellation, non-renewal or substantial alteration of its terms.

**24.6 Carrier Recommendations.** The Interconnector must also conform to the recommendation(s) made by SWBT's Property Insurance Company which Interconnector has already agreed to or to such recommendations as it shall hereafter agree to.

**24.7 Material Breach.** Failure to comply with the provisions of this section will be deemed a material violation of this Agreement.



#### **ARTICLE XXV - SWBT'S RIGHT OF ACCESS**

SWBT, its agents, employees, and other SWBT-authorized persons shall have the right to enter the Premises at any reasonable time to examine its condition, make repairs required to be made by SWBT hereunder, and for any other purpose deemed reasonable by SWBT. SWBT may access the Premises for purpose of averting any threat of harm imposed by the Interconnector or its equipment or facilities upon the operation of SWBT equipment, facilities and/or personnel located outside of the Premises. If routine inspections are required, they shall be conducted at a mutually agreeable time.

#### **ARTICLE XXVI - PURPOSE AND SCOPE OF AGREEMENT**

Through this Agreement, the Interconnector is placing telecommunications equipment and facilities on SWBT property for the purpose of connecting with SWBT's network only. The parties agree that this Agreement does not constitute, and shall not be asserted to constitute, an admission or waiver or precedent with any State commission, the Federal Communications Commission, any other regulatory body, any State or Federal Court, or in any other form that SWBT has agreed or acquiesced that any piece of Interconnector equipment or facility is "equipment necessary for interconnection or access to unbundled network elements" under 47 U.S.C. 251(c)(6).

#### **ARTICLE XXVII - MISCELLANEOUS**

27.1 Exhibits. The following Exhibits are attached hereto and made part hereof:

Attachment A - Additional Equipment Request Form

Attachment 1 - Physical Collocation Application Form

Attachment 2 - Construction Cost Summary

Attachment 3 - Nondiscrimination Compliance Agreement (SW9368)

27.2 Variations. In the event of variation or discrepancy between any duplicate originals hereof, including exhibits, the original Agreement held by SWBT shall control.

27.3 Governing Law. This Agreement shall be governed by the laws of the State in which the Premises are located, without regard to the choice of law principles thereof.

27.4 Joint and Several. If Interconnector constitutes more than one person, partnership, corporation, or other legal entities, the obligation of all such entities under this Agreement is joint and several.

27.5 Future Negotiations. SWBT may refuse requests for additional space in the Building or in any other SWBT premises if the Interconnector is in material breach of this Agreement, including having any past due charges hereunder. In any and each such event, the Interconnector hereby releases and shall hold SWBT harmless under Article XV from any duty to negotiate with the Interconnector or any of its affiliates for any additional space or physical collocation.

27.6 Severability. With the exception of the requirements, obligations, and rights set forth in Article II hereof, if any of the provisions hereof are otherwise deemed invalid, such invalidity shall not invalidate the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid provision(s), and the rights and obligations of SWBT and the Interconnector shall be construed accordingly.

27.7 Paragraph Headings and Article Numbers. The headings of the articles and paragraphs herein are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

27.8 Entire Agreement. This Agreement with the attached schedules and exhibits, and referenced documentation and materials attached hereto set forth the entire understanding of the parties and supersedes all prior agreements, arrangements and understandings relating to this subject matter and may not be changed except in writing by the parties; provided, however, that this provision shall not

affect current or pending tariffs, under investigation or otherwise, including any charges due thereunder. No representation, promise, inducement or statement of intention has been made by either party which is not embodied herein, and there are no other oral or written understandings or agreements between the parties relating to the subject matter hereof except as may be referenced herein.

27.9 No Third Party Beneficiaries. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

27.10 Construction. This Agreement shall be interpreted and governed without regard to which party drafted this Agreement.

27.11 Multiple Originals. This Agreement may be executed in multiple copies, each of which shall be deemed an original.

27.12 Wavier of Obligations.

- (a) Whenever this Agreement requires the consent of a party, any request for such consent shall be in writing.
- (b) Neither party shall be deemed to have waived or impaired any right, authority, or option reserved by this Agreement (including the right to demand exact compliance with every term, condition and covenant herein, or to declare any breach hereof to be a default and to terminate this Agreement prior to the expiration of its term), by virtue of any custom or practice of the parties at variance with the terms hereof or any failure, refusal or neglect to exercise any right under this Agreement or to insist upon exact compliance by the other with its obligations hereunder, including any rule or procedure, or any waiver, forbearance, delay, failure or omission by SWBT to exercise any right, power or option, whether of the same, similar or different nature, with respect to one or more other Interconnectors.

27.13 Rights Cumulative. The rights of a party hereunder are cumulative and no exercise or enforcement by such party of any right or remedy hereunder shall preclude the exercise or enforcement of any other right or remedy hereunder or to which such party is entitled to enforce.

**27.14 Binding Effect.**

- (a) This Agreement is binding upon the parties hereto, their respective executors, administrators, heirs, assigns and successors in interest.
- (b) All obligations by either party which expressly or by their nature survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature.

**27.15 Impossibility of Performance.** Neither party shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from:

- (a) compliance with any law, ruling, order, regulation, requirement or instruction of any federal, state or municipal government or any department or agency thereof or court of competent jurisdiction;
- (b) acts of God;
- (c) acts of omissions of the other party;
- (d) fires, strikes, labor difficulties, embargoes, war, insurrection or riot;

or any other intervening act beyond the reasonable control of the party claiming such a delay. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable. In any such event, the Interconnector's employees, authorized agents and contractors will comply with the Emergency Operating Procedures established by SWBT.

**27.16 Survival.** The terms, provisions, representations, and warranties contained in this Agreement that by their nature and/or context are intended to survive the performance thereof by either or both parties hereunder shall so survive the completion of performances and termination of this Agreement, including the making of any and all payments due hereunder.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed and delivered this Agreement as of the day and year first above written.

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT.**

**SOUTHWESTERN BELL TELEPHONE COMPANY**

By: \_\_\_\_\_

Name: Larry B. Cooper

Title: General Manager - Competitive Provider Account Team

Interconnector: 02410000/000

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attachment A

Southwestern Bell Telephone Company  
Account Manager-CPAT, One Bell Plaza, Rm. 522, Dallas, TX 75202

Re: XYZ COMPANY, City, CO Name Central Office

Pursuant to the referenced Physical Collocation Agreement ("Agreement"), this letter constitutes a request to place the following additional equipment and/or facilities in the Premises:

<u>Generic Name</u>	<u># of Bays</u>	<u>Floor Loading</u>	<u>Power Req.</u>	<u>Heat Release</u>
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If this request is acceptable to Southwestern Bell Telephone Company ("SWBT"), please indicate that acceptance by executing both originals and returning one to the undersigned. With the return of an executed original, the Agreement shall be deemed amended to reflect that the listed equipment and facilities may be located in the Premises. In all other respects, the Agreement shall be unaffected.

If not acceptable, please let me know of SWBT's objections or conditions to its acceptance.

All capitalized terms not defined in this letter but defined in the Agreement shall have the meaning ascribed to such term in the Agreement.

**INTERCONNECTOR: XYZ COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**AGREED AND ACCEPTED: SOUTHWESTERN BELL TELEPHONE COMPANY**

By: \_\_\_\_\_  
Name: Larry B. Cooper  
Title: General Manager - Competitive Provider Account Team (CPAT)  
Date: \_\_\_\_\_

(Aninbaub) Schedule 6

# Southwestern Bell Telephone Company



*Interconnector's  
Technical Publication*

*for*

*Physical Collocation*

*Issue 7  
October 15, 1997*



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